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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd August, 2007

No. 9265-1i/1-(S)-49/02(Pt)/LE. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 5th July 2007 in I.D. Case No. 93 of 2002 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the management of Divisional Forest Officer, Kenduleaf Division, Panposh, Rourkela and their workman Sri Kesab Chandra Naik at Rupatolla, Post. Panposh, P.S. Raghunathpali, District Sundargarh was referred for adjudication is hereby published in the schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT :

SAMBALPUR

I.D. CASE NO. 93 OF 2002

Dated the 5th July, 2007

Present : Shri P. K. Mahapatro, L.L.B.

Presiding Officer,
Labour Court, Sambalpur

Between

The Management of
Divisional Forest Officer,
Kenduleaf Division, Panposh, Rourkela ... First-party Management

AND

Their workman
Sri Kesab Chandra Naik
At : Rupatolla, Post. Panposh,
P.S.: Raghunathpali, District : Sundargarh ... Second-party Management

Appearances :

For the First-party Management ... Sri P.K.Sahu, D.F.O. of
K.L. Division

For the Second-party Management Self.

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections, 10 & 12 of the Industrial Disputes Act, 1947 vide Memo No. 14152(5)/ L. E., Dated the 5th December 2002 for adjudication of dispute scheduled below:—

“ Whether the termination of services of Sri Keshab Chandra Naik, Watchman of the Forest rest House of the Divisional Forest Officer, Kenduleaf Division, Panposh ,Rourkela with effect from 5th July 2000 by the management is legal and / or justified ? If not what relief the workman is entitled to ?”

2. The workman in his statement of claim has stated that he was employed in the month of April, 1994 as a labourer on daily wages basis under the management and then he was shifted to the binding section of Birda under Kalunga Kenduleaf range and in the month of January, 1995 he was shifted to the rest house available at Panposh and there he worked as a watchman-cum-peon till 5th July 2000. Accordingly to him on that day he was terminated from service and while doing so, the monetary benefits as contemplated under law were not given to him. By mentioning the above facts and circumstances he has prayed for answering the reference in his favour.
3. The management has filed a written statement to substantiate its plea .In it, it is their plea that the workman worked as a watcher at Panposh forest rest house from 10th April,1995 but not from April,1994. The D.F.O.(Kenduleaf), Rourkela has also challenged the appointment of the workman from April, 1994. It is his specific case that he worked up till 21st June, 2000 and then he absconded from service. In para-4 of the written statement it is averred by the D.F.O. of Kenduleaf that from 10th April, 1995 till 21st June, 2000 the workman got his wages as stipulated by the Government of Orissa and after his abscondance from the service place there is no question of payment of wages to him . According to D.F.O. of Kenduleaf the workman was not terminated from service, as a result, there is no necessity of issuing notice to him . By mentioning the above facts and circumstances the management has prayed for answering the reference against the workman.
4. By taking note of the pleadings of the parties the following issues are settled in this case.

ISSUES

- (i) “Whether the termination of services of Sri Keshab Chandra Naik, Watchman of the Forest rest House of the Divisional Forest Officer, Kenduleaf Division, Panposh ,Rourkela with effect from 5th July 2000 by the management is legal and / or justified ?
- (ii) To what relief, the workman is entitled ?”

FINDINGS

5. Issue Nos.i and ii :– Both the issues are taken up together as those are interlinked. The workman figured himself as only witness from his side and the management side has examined in the present D.F.O. as the only witness. In his evidence the workman has stated that he was started his service from the month of April, 1994 and he worked up till 23rd July 2000. He has further stated that he was in continuous employment during the above period and while terminating his service, the monetary benefits were not given to him. The D.F.O. who is present in person has cross-examined the workman and during the course of the same, he has simply suggested that the workman had abandoned from his service place and the allegation of termination by the management does not arise. But the same is abnegated by the workman. The plea taken by the management that he was in employment from 10th April, 1995 till 21st June 2000 is also not suggested to him (workman). It is only suggested that he remained away from duty from 22nd June, 2000. In his evidence the D.F.O. has stated that he was in service from 10th April, 1995 and 22nd June, 2000 he absconded from duty. There is no reason to disbelieve the evidence of the workman that from April, 1994 he was in duty as because nothing substantial is elicited to disbelieve the same. Furthermore the appointment date of the workman is not of greater importance as in the statement of claim he has not claimed any arrear wages during his service period. But according to the workman he worked up till 23rd July, 2000. But in this connection the D.F.O. has taken the plea that he absconded from duty from 22nd June, 2000. But from the evidence on record it is well forthcoming that the D.F.O. even after the alleged abscondance of the workman from the work site has not issued any notice mentioning the date from which he had absconded with a further intimation to the workman to join in duty within a particular period failing which he will be debarred from his job. In absence of the same, the plea that the workman absconded from duty and then they appointed another daily wage Choukidar cannot be easily swallowed. So admittedly the requirements of Section-25 F of Industrial Disputes Act are not followed in this case. So there is no other alternative but to conclude that the retrenchment is invalid in law. As per the settled principle of law where the retrenchment is found to be illegal and invalid for non-compliance of the mandatory requirements of Section-25F of the Industrial Disputes Act, it is imperative for the Labour Court to award the relief of reinstatement with full back wages. But in certain circumstance the Court has discretion to prune the quantum of back wages. In the case in hand admittedly the workman has not worked from the date as referred above. During that period he might have engaged himself in other works to meet his requirements. So after taking note of entire position, I am of opinion that the back wages is limited to Rs. 30,000/- (Rupees thirty thousand only) in to the management is directed to reinstate him in service at the earliest possible time or within one month of publication of the award in the *Gazette*. So the above issues are answered in favour of the workman and against the management. Hence the following award.

AWARD

The reference is answered on contest in favour of the workman and against the management. The termination of service of Shri Keshab Chandra Naik, Watchman of the Forest Rest House of the Divisional Forest Officer, Kenduleaf Division, Panposh, Rourkela with effect from the 5th July, 2000 by the management is held to be illegal and unjustified. The management is directed to reinstate the workman in service within one month of publication of the award in the *Gazette*. The management is further directed to pay the back wages which is limited to Rs. 30,000/- (Rupees thirty thousand only) in to the workman within two months hence, failing which the management shall pay interest (simple interest) @12% to the workman.

Dictated and corrected by me.

P. K. Mahapatro

5-7-2007

Presiding Officer,
Labour Court,
Sambalpur.

P. K. Mahapatro

5-7-2007

Presiding Officer,
Labour Court,
Sambalpur.

By order of the Governor

N. C. RAY

Under-Secretary to Government